

DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

WILLIAM F. MILTON, III
Respondent

Case No.: I-00-60106

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

I. Introduction

By Notice of Infraction served on January 19, 2001, the Government charged Respondent William F. Milton, III with three violations of the Health Occupations Regulatory Act of 1985. The Government alleged that Dr. Milton violated D.C. Code §§ 2-3305.1, and 2-3310.1, both of which prohibit the unlicensed practice of a number of health occupations, including dentistry. The Government also alleged that Dr. Milton violated D.C. Code § 2-3310.2, which prohibits an unauthorized person from representing to the public that he or she is authorized to practice a health occupation in the District of Columbia. The Government sought a fine of \$500.00 for each offense, a total of \$1500.00.

On February 7, 2001, Respondent filed a timely plea of Deny to all the charges. This administrative court then issued an order setting a hearing date of March 7, 2001. All parties appeared on the date of the hearing. Bryan Chase, the investigator who issued the Notice of Infraction, represented the Government and Respondent appeared *pro se*.

Based upon the testimony in the record, my evaluation of the credibility of the witnesses and the documents admitted into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondent William Milton, III graduated from Howard University Dental School in 1983. He worked for several years thereafter for University Dental Associates, a dental practice owned by several professors at Howard. Dr. Milton received a license to practice dentistry in the District of Columbia in the mid-1980's. Initially, he relied upon the administrative staff of University Dental Associates to make the necessary filings to keep his license current, and his license was regularly renewed while he practiced at University Dental Associates. He received his last renewed license in 1989, and it expired on January 18, 1991. Petitioner's Exhibit 100 ("PX-100").

In 1991, Dr. Milton decided to return to dental school to improve his skills. He attended school part-time, and supported himself over the years by working part-time for various dentists in the District of Columbia. The evidence is unclear as to the nature and extent of his practice, if any, between 1991 and 1995. In 1995, he began an association with Dr. Howard Davis, whose office was located at 5505 5th Street, N.W. Dr. Milton worked part-time in Dr. Davis' office between 1995 and June 1999, when Dr. Davis died. Dr. Milton does not dispute that he treated patients during that period, nor does he dispute that his actions constituted the practice of dentistry. After Dr. Davis' death, Dr. Milton continued to practice dentistry at the 5th Street address, although he used a different office in the building. Even after Dr. Davis' death, Dr. Milton has not practiced full-time. He has, however, regularly seen patients between June 1999 and the present. It is undisputed that Dr. Milton has not been licensed to practice dentistry in the District of Columbia since 1991.

Dr. Milton first came to Mr. Chase's attention in December 2000. At that time, Mr. Chase was performing a routine comparison of dentists' listings in the telephone book with the licensing records maintained by the Department of Health's contractor. He discovered a telephone listing for Dr. Milton identifying him as a dentist. The contractor's records, however, revealed that Dr. Milton's last license expired in 1991. PX-100.

Mr. Chase visited Dr. Milton's office on January 17, 2001. The office is located in a building that houses several medical and dental offices. A sign outside the building and the directory in the building's lobby both list "William F. Milton, D.D.S." as having an office there.

In addition, the door to Dr. Milton's office has a sign reading "Dr. William Milton, Dentistry." PX-102. Dr. Milton was not present in the office when Mr. Chase visited, although a receptionist was there. Mr. Chase obtained one of Dr. Milton's business cards during his visit, which contains the title "William F. Milton, III, D.D.S." and lists the 5th Street, N.W. address. Mr. Chase asked the receptionist for a copy of Dr. Milton's license. His original license was hanging on the wall, but the receptionist said that she did not know where the current license was.

Dr. Milton testified that he had been trying to renew his license for a number of years. He stated that he submitted the necessary paperwork in 1995 to the Department of Consumer and Regulatory Affairs ("DCRA"), which was responsible for handling license renewals at that time. He testified that when he did not hear from DCRA after a year or two, he inquired about the status of his application and was told that his application had been lost. According to Dr. Milton, he then began anew the process of assembling the necessary materials to renew his license. He claimed that the process was delayed unduly because those responsible for reviewing his application (first DCRA, then ASI, the contractor hired by the Department of Health to process license renewals) would give him different information about the supporting documents that were necessary. He testified that he finally submitted an application that was deemed complete by ASI in February 2001, after the issuance of the Notice of Infraction. Dr. Milton testified that he did not "knowingly" practice dentistry without a license because he always was trying to obtain a renewed license. He admitted, however, that renewal of his license has not been a primary focus of his attention, even though he has been treating patients.

While I credit Dr. Milton's testimony that he submitted a renewal application in 1995, the evidence is insufficient for me to find that he diligently pursued renewal of the license. Long periods of time elapsed without any effort by Dr. Milton to get his application in order or to monitor the progress of his application. Dr. Milton failed to introduce copies of any of the renewal applications that he had submitted between 1995 and 2000 or copies of any correspondence between him and either DCRA or ASI concerning possible deficiencies in his applications. As a result, there is an insufficient basis to find that regulatory delays or bureaucratic foul-ups are the primary cause of the delay of more than five years in the submission of a completed application. Although Dr. Milton was (and remains) sincere in his desire to obtain a license, his admitted lack of attention to the renewal of his license is largely to blame for the delay in the application process.

III. Conclusions of Law

A. Unlicensed Practice

Two different sections of the Health Occupations Revision Act prohibit unlicensed practice of a health occupation. The first, D.C. Code § 2-3305.1, identifies a number of health occupations, including dentistry, for which a license is required for practice in the District of Columbia. The second, D.C. Code § 2-3310.1, provides that "[n]o person shall [1] practice, [2] attempt to practice or [3] offer to practice" a health occupation in the District of Columbia unless licensed or exempted from licensing under the statute. Dentistry is included within the statutory

definition of “health occupation.” *See* D.C. Code §§ 2-3301.1(7), 2-3302.1(b). The Government did not allege that Dr. Milton violated the “attempt to practice or offer to practice” provisions of § 2-3310.1; its theory was that Dr. Milton violated the section by practicing without a license. At the hearing, the Government recognized the possibility, if not the likelihood, that a charge of violating § 2-3310.1 by practicing dentistry without a license does not allege a distinct offense from a charge of violating § 2-3305.1 by practicing dentistry without a license.¹ The Government, therefore, moved to dismiss the § 2-3310.1 charge, and I granted that motion.

As noted above, § 2-3305.1 requires a person who practices dentistry in the District of Columbia to obtain a license issued pursuant to the Health Occupations Revision Act. Dr. Milton does not dispute that he has practiced dentistry in the District of Columbia since at least 1995, and admits that he did not possess a license during that period. Although he may not have practiced on a full-time basis, the statute contains no exclusion for part-time practitioners. Anyone who practices dentistry in the District must have a license, regardless of the amount of time he or she devotes to that practice.

Dr. Milton’s efforts to renew his license are not an acceptable substitute for a license. Regulations implementing the Health Occupations Revision Act make this clear. Pursuant to 17 DCMR 4005.5, the holder of an expired license to practice a health occupation may renew the

¹ *See Blockburger v. United States*, 284 U.S. 299 (1932), which establishes the following rule of statutory construction: “where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” *Id.* at 304. *See generally Albernaz v. United States*, 450 U.S. 333, 337-42 (1981)

license within sixty days of its expiration by paying the applicable late fee. If the licensee meets the sixty-day deadline, he or she is deemed to have possessed a valid license for the period between the expiration of the old license and the renewal. If, however, the licensee does not renew within the sixty-day grace period, the old license is deemed to have lapsed on the date of its expiration. 17 DCMR 4005.6. Dr. Milton filed a renewal application in 1995, four years after his license expired. Because he did not meet the regulations' sixty-day deadline, he could not practice lawfully until the Board of Dentistry issued him a new license. It is clear, therefore, that Dr. Milton violated § 2-3305.1 by practicing dentistry without a license in the District of Columbia.

B. Misrepresentation

The Government also has charged Dr. Milton with violating D.C. Code § 2-3310.2, which provides:

Unless authorized to practice a health occupation under this chapter, a person shall not represent to the public by title, description of services, methods or procedures, or otherwise that the person is authorized to practice the health occupation in the District.

When Mr. Chase visited Dr. Milton's office on January 17, 2001, Dr. Milton did not have a license to practice dentistry, nor was he otherwise authorized to practice. Therefore, if Dr. Milton represented to the public, by title, description of services or otherwise, that he was authorized to practice, he violated § 2-3310.2.

Through the use of the title “D.D.S.” on the sign outside his the office building, on the building directory and on his business card, and the use of the term “Dentistry” on his office door to describe the services that he offered, Dr. Milton represented to the public that he was available to perform dental services at 5505 5th Street, N.W. That representation of availability carries with it an implied representation of his authority to do so, in view of the pervasive regulation of health occupations in general, and of dentistry in particular. Members of the public reasonably expect that a dentist offering his services to patients in the District of Columbia has fulfilled all the necessary requirements for practicing here. Thus, Dr. Milton’s signs, his listing in the building directory and his business card communicated to the public that he was authorized to practice dentistry in the District of Columbia. Because he was not so authorized, he violated § 2-3310.2.

C. The Appropriate Fines

The Civil Infraction Fine Schedule authorizes the imposition of separate \$500 fines for violations of §§ 2-3305.1 and 2-3310.2. *See* 16 DCMR 3212(k) and 3212 (r). On this record, there is no basis for any reduction in those fines. Although Dr. Milton has made various attempts to comply with the law by seeking renewal of his license, he has not done so with sufficient diligence. In an appropriate case, the sustained efforts of a health professional to renew a license might mitigate a fine for unlicensed practice. This is not such a case, however. Due to the combination of more than five years of unlicensed practice and Dr. Milton’s admitted lack of focus upon the renewal of his license, no reduction in the fine for either offense is appropriate.

IV. Order

Based upon the above findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

ORDERED, that Dr. Milton has violated both D.C. Code § 2-3305.1 and 2-3310.2; and it is further

ORDERED that the charge of violating D.C. Code §§ 2-3310.1 is **DISMISSED**; and it is further

ORDERED that Respondent shall cause to be remitted a single payment totaling **ONE THOUSAND DOLLARS (\$1,000.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's license or permit pursuant to D.C. Code § 6-2713(f).

/s/ **3/20/01**

John P. Dean
Administrative Judge